Supreme Court, U.S.
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No. 02 176

In the Supreme Court of the United States

JERRY C. CROUCH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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43 pp

QUESTION PRESENTED

Title 18 U.S.C. § 1957(a) (Engaging in a Monetary Transaction) provides: "Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b)." To constitute a criminal offense under 18 U.S.C. § 1957, the monetary transaction must exceed $10,000. The question presented, which has divided circuit courts, is: Where a defendant is convicted of violating 18 U.S.C. § 1957, can financial transactions under $10,000 be included as relevant conduct for sentencing purposes?

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Jerry C. Crouch, by and through counsel, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-6a) is reported at 288 F.3d 907. The judgment of the district court (App., *infra*, 7a-22a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 3, 2002. App., *infra*, 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of 18 U.S.C. § 1957, "Engaging In Monetary Transactions In Property Derived From An Unlawful Activity," are reprinted in an appendix to this petition. App., *infra*, 23a. The pertinent provisions of United States Sentencing Guidelines § 2S1.1 (2001), "Laundering of Monetary Instruments; Engaging In Monetary Transactions In Property Derived From An Unlawful Activity," and § 2S1.2 (1994), "Engaging In Monetary Transactions In Property Derived From Specified Unlawful Activity," are reprinted in an appendix to this petition. App., *infra*, 23a-25a.

STATEMENT OF THE CASE

Introduction

On August 13, 1997, Jerry Crouch and seven other individuals were charged in a fifty-six-count indictment involving gambling-related offenses. On January 29, 1999, Mr. Crouch pled guilty to three counts -- one count of conspiracy to conduct an illegal gambling business, one count of engaging in monetary transactions in property derived from a specified unlawful activity, and one count of filing a false statement in an income tax return. App., *infra*, 2a.

On June 30, 2000, the district court sentenced Mr. Crouch to twenty-four months in prison and ordered him to pay a $30,000 fine and $50,098.23 in restitution. Mr. Crouch filed a timely notice of appeal on June 30, 2000. The district court granted Mr. Crouch's motion to stay the execution of the judgment and allowed Mr. Crouch to remain free on bond pending his appeal. App., *infra*, 7a-22a.

Jerry Crouch And The Lakeview Athletic Club

Jerry Crouch is a fifty-eight-year-old professional gambler who resides in Las Vegas, Nevada with his wife, Helen Barton. During part of the 1990s, Mr. Crouch also maintained a residence in Centerville, Ohio, a suburb of Dayton.

In or about January 1992, while in the Dayton area, Mr. Crouch was approached by some friends, Daniel Carozza, Stewart Daniels, and others, who asked him for help in forming an athletic club in the Dayton area. Mr. Crouch agreed, and the men formed JMD Partnership ("JMD").

In September 1992, JMD opened the Lakeview Athletic Club ("LAC") in Springboro, Ohio. LAC was a private club that offered its members the opportunity to play a variety of games, including billiards, basketball, chess, and horseshoes. LAC also allowed its members to play games of chances, primarily poker and blackjack. Within LAC, the JMD partners performed multiple functions. Mr. Crouch provided much of the capital to fund the business. LAC operated until March 25, 1994, when it was closed by the partners for financial reasons.

Shortly after LAC was opened, in or about November 1992, Mr. Crouch, along with at least four other individuals, started another gambling business in a few Dayton-area homes. This second business involved the placing and receiving of sports wagers. Basically, patrons would call the residences and place bets on sporting events. Mr. Crouch and other members of the business would also place bets themselves.

While LAC was in operation, the partners would receive checks and other monies from members who owed LAC money, either for gambling-related purchases and/or losses. On some occasions, one of Mr. Crouch's partners, Daniel Carozza, would receive LAC gambling funds and deposit them into the JMD partnership account at Community National Bank. On other occasions, Mr. Crouch would receive these funds from LAC members. From time to time, Mr. Crouch would take the LAC funds, as well as funds from his sports-betting business, to the Family Market, a store operated by Mr. Crouch's relatives. There, store employees would deposit the funds into the store's bank account at National City Bank in Dayton. On one occasion, Mr. Crouch used $20,000 from this account to purchase an automobile from a local car dealer.

Mr. Crouch's Charges And Plea

As the result of his gambling-related activities, Mr. Crouch and seven other individuals were charged as a part of a fifty-six-count indictment on August 13, 1997. Mr. Crouch was charged in fifty of the counts. Counts 1-2 charged Conspiracy to Conduct an Illegal Gambling Business, in violation of 18 U.S.C. § 371; Count 3 charged Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. § 1956; Counts 4-5 charged Conducting an Illegal Gambling Business and Aiding and Abetting, in violation of 18 U.S.C. § 1955; Counts 6-37 charged Money Laundering and Aiding and Abetting, in violation of 18 U.S.C. § 1956; Counts 44-54 charged Money Laundering, in violation of 18 U.S.C. § 1957; and Counts 55-56 charged Making a False Statement of Income Tax Return, in violation of 26 U.S.C. § 7206(1). Mr. Crouch was also charged with a Forfeiture, in violation of 18 U.S.C. § 982, in Count A of the indictment. All of the charges against Mr. Crouch, in one form or another, stemmed from the illegal gambling operations in which he participated in the Dayton area. App., *infra*, 2a.

On January 29, 1999, Mr. Crouch entered a guilty plea to three counts. Under Count 1 (gambling conspiracy), Mr. Crouch admitted to conspiring to conduct an illegal gambling operation at LAC. Under Count 54 (Engaging in Monetary Transactions in Property Derived from a Specified Unlawful Activity), Mr. Crouch admitted that he engaged in an illegal monetary transaction by causing a check for $20,000 payable to Al Castrucci, a car dealer, to be issued for his benefit from the Family Market's bank account. And, under Count 56 (False Statement on an Income Tax Return), Mr. Crouch admitted that he reported gambling income of $20,000 and taxable income of $106,569 when he actually received more of both. App., *infra*, 2a.

Under the terms of the plea agreement, the Government agreed to dismiss the remaining counts of the indictment. In exchange, Mr. Crouch agreed to forfeit $200,000 of the gambling funds seized by the Government. App., *infra*, 7a-22a.

The District Court's Sentencing

Mr. Crouch was sentenced following his plea of guilty to one count of Engaging In Monetary Transactions In Property Derived From A Specified Unlawful Activity, in violation of 18 U.S.C. § 1957, one count of Gambling, in violation of 18 U.S.C. § 1955, and one count of Making a False Statement of Income Tax Return, in violation of 26 U.S.C. § 7206(1). App., *infra*, 7a-22a.

At sentencing, pursuant to U.S.S.G. § 2S1.2(b)(2), the court added 3 points to Mr. Crouch's offense level because the court found the total amount of illegal transactions ($589,773.48) was more than $350,000 but less than 600,000. The court ignored the fact that, under the facts supporting the plea agreement, Mr. Crouch engaged in only one individual transaction (for $20,000) that exceeded the legal threshold of $10,000 under 18 U.S.C. § 1957. App., *infra*, 3a.

Pursuant to the district court's findings, the court sentenced Mr. Crouch to twenty-four months in prison. Mr. Crouch filed a timely notice of appeal, and the district court allowed Mr. Crouch to remain free on bond pending his appeal. App., *infra*, 21a.

On appeal, Mr. Crouch asserted that the district court erred by including financial transactions under $10,000 when it calculated the relevant conduct of his § 1957 offense. Mr. Crouch pointed out that transactions under $10,000 do not

violate 18 U.S.C. § 1957,[1] and therefore, should not be included as relevant conduct for sentencing purposes.[2] Accordingly, Mr. Crouch asserted that, under U.S.S.G. § 2S1.2(b)(2), there should have been no enhancement because the value of each of the other individual transactions was not shown to exceed $10,000. App., *infra*, 3a-5a.

On May 3, 2002, the Sixth Circuit rejected Mr. Crouch's argument. App., *infra*, 4a-5a. To support its holding, the Court simply stated, "We have previously rejected this argument." App., *infra*, 5a. The Sixth Circuit's holding, however, directly conflicts with the holdings of at least two other circuits. *See United States v. Sobral*, No. 96-

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[1] Section 1957(a) provides: "Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in ***a monetary transaction*** in criminally derived property that is ***of a value greater than $10,000*** and is derived from specified unlawful activity, shall be punished as provided in subsection (b)." (Emphasis added).

[2] The relevant conduct in engaging-in-a-monetary-transaction case under 18 U.S.C. § 1957 is unlike such conduct in money laundering cases under 18 U.S.C. § 1956. Under the money laundering statute, there is no minimum monetary threshold necessary to constitute an offense of money laundering. *See* 18 U.S.C. § 1956. Thus, in money laundering cases, additional monies laundered beyond those found in the count of conviction, regardless of their amount, can be considered as relevant conduct. The offense of engaging-in-monetary-transactions from an illegal activity under 18 U.S.C. § 1957, however, requires that the monetary transaction exceed $10,000. If the transaction falls below $10,000, it does not constitute an offense under § 1957. Consequently, additional monies "transacted" beyond those found in the count of conviction, cannot be considered as relevant conduct unless the individual transaction exceeds $10,000.

4770, 1998 WL 276263, at *4-*5 (4th Cir. May 29, 1998); *United States v. Rodriguez*, 278 F.3d 486, 493 (5th Cir. 2002). App., *infra*, 5a.

REASONS FOR GRANTING THE PETITION

In calculating Mr. Crouch's sentencing guidelines, the Sixth Circuit sanctioned the inclusion of approximately $509,773.48 worth of transactions as relevant conduct for Mr. Crouch's Engaging In An Illegal Monetary Transaction offense. Individually, however, each of these transactions fell below the 18 U.S.C. § 1957 threshold of $10,000. In so doing, the Sixth Circuit further entrenched the division among circuit courts regarding the propriety of counting monetary transactions valued at less than $10,000 as relevant conduct in § 1957 offenses.

The Sixth Circuit's holding directly conflicts with the holdings of the Fourth and Fifth Circuits. *See United States v. Sobral*, No. 96-4770, 1998 WL 276263, at *4-*5 (4th Cir. May 29, 1998) (unpublished) (ruling that relevant conduct for § 1957 offenses can include uncharged conduct only if the uncharged conduct could have been charged as an offense under § 1957); *United States v. Rodriguez*, 278 F.3d 486, 493 (5th Cir. 2002) (holding that, unless a defendant is convicted under the money laundering statute (§ 1956), money laundering cannot be used against him as relevant conduct to enhance his sentence). On the other hand, the Sixth Circuit's opinion is consistent with the holdings of the Third, Tenth, and Eleventh Circuits. *See United States v. Mullens*, 65 F.3d 1560, 1564-65 (11th Cir.1995); *United States v. Thompson*, 40 F.3d 48, 51-52 (3d Cir.1994); *United States v. Johnson*, 971 F.2d 562, 574-75 (10th Cir.1992).

Given the split among the circuits, the Court's review is necessary to resolve the conflict regarding the issue of relevant conduct in § 1957 cases.

The Court's review is further warranted given the recent amendments to the Sentencing Guidelines affecting Money Laundering offenses under 18 U.S.C. § 1956 and Engaging In Illegal Monetary Transactions offenses under 18 U.S.C. § 1957. Effective November 1, 2001, U.S.S.G. § 2S1.2, the former sentencing guideline for § 1957 offenses, was deleted and the sentencing provision for § 1957 offenses was placed in U.S.S.G. § 2S1.1, which formerly contained the guidelines for Money Laundering offenses under 18 U.S.C. § 1956. Now, U.S.S.G § 2S1.1 governs the appropriate sentencing guidelines for both § 1956 and § 1957 offenses.

In some cases, the base offense level for § 1957 cases will be determined by applying U.S.S.G. § 2S1.1(a)(2). Under U.S.S.G. § 2S1.1(a)(2), the base offense level for § 1956 and § 1957 offenses is 8 plus "the number of offense levels from the table in § 2B1.1 . . . corresponding to the *value of the laundered funds* . . . ." U.S.S.G. § 2S1.1 (Emphasis added). "Laundered Funds" is defined as "the property, funds, or monetary instrument involved in the transaction, financial transaction, monetary transaction, transportation, transfer, or transmission in violation of 18 U.S.C. § 1956 or § 1957." U.S.S.G. § 2S1.1, Application Note 1. Although § 2S1.1(a)(2) is clear that the base level for a § 1957 offense may be enhanced by relevant conduct, the question still remains whether such conduct can include transactions that do not meet the $10,000 threshold under 18 U.S.C. § 1957.

Accordingly, even with the Amended Sentencing Guidelines in place, review by this Court is warranted.

ARGUMENT

Under 18 U.S.C. § 1957 and U.S.S.G. § 2S1.2(b)(2), Individual Transactions Under $10,000 Cannot Be Used As Relevant Conduct To Enhance The Offense Level Of An Engaging-In-An-Illegal-Monetary-Transaction Offense.

In calculating Mr. Crouch's sentencing guidelines, the district court included $589,773.48 worth of transactions as relevant conduct of the engaging-in-a-monetary-transaction offense.[3] The inclusion of these aggregated transactions was in error, however, because there was no evidence that any of the individual transactions comprising this additional amount exceeded the $10,000 threshold set forth by 18 U.S.C. 1957(a), the engaging-in-a-monetary-transaction statute.

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[3] The Statement of Facts stated that Mr. Crouch made a single $20,000 withdrawal of illegal gambling proceeds from the Family Market Account. This transaction formed the basis for the engaging-in-a-monetary-transaction offense. The Presentence Report ("PSR"), however, found that the total value of the funds deposited into the Family Market account was $463,327.48. The PSR also found that Mr. Crouch was accountable for $126,446 that Daniel Carozza deposited into the JMD partnership account. Accordingly, the PSR determined that the total amount of funds relevant to the count of conviction was $589,773.48. Because this amount was more than $350,000 but less than $600,000, Mr. Crouch's offense level was increased by three points pursuant to U.S.S.G. § 2S1.1(2)(D).

Section 1957(a) provides:

> (a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in ***a monetary transaction*** in criminally derived property that is ***of a value greater than $10,000*** and is derived from specified unlawful activity, shall be punished as provided in subsection (b). (Emphasis added).

Thus, in order for a transaction to constitute criminal conduct under § 1957(a), it must exceed $10,000 and it must be derived from a specified unlawful activity. *See United States v. Sobral*, No. 96-4770, 1998 WL 276263, at *4-*5 (4th Cir. 1998) (unpublished) (holding that relevant conduct under § 1B1.3 can include uncharged conduct only if the uncharged conduct could have been charged under § 1957); *United States v. Rodriguez*, 278 F.3d 486, 493 (5th Cir. 2002) (holding that, unless a defendant is convicted under the money laundering statute (§ 1956), money laundering cannot be used against him as relevant conduct to enhance his sentence).[4]

Here, the district court used the aggregate total of all of the transactions made by Mr. Crouch and Mr. Carozza to determine the relevant § 1957 conduct.[5] The court made this

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[4] Inexplicably, the Sixth Circuit actually cited *Rodriguez* as support for its holding in the instant case. App., *infra*, 5a.

[5] At the time of Mr. Crouch's sentencing, the sentencing guidelines for an engaging-in-an-illegal-monetary-transaction offense, a violation of 18 U.S.C. § 1957, were set forth in U.S.S.G. § 2S1.2. These guidelines provided a base offense level of 17. The guidelines, however, also directed the court to consider

calculation without assessing whether each of the individual and separate transactions included in the total amount satisfied the minimum threshold of $10,000 as required under § 1957. Had the court made this assessment, it would have learned that, aside from the $20,000 withdrawal found in Count 54 and another single transaction of $20,000 made by a co-defendant on April 22, 1992, there was no evidence presented in the Presentence Report or during the sentencing hearing to prove by a preponderance of the evidence that any of the other transactions exceeded $10,000.

In sum, with only $40,000 in proven relevant § 1957 conduct, the district court was wrong to increase Mr. Crouch's offense level by three points.[6] Under U.S.S.G. § 2S1.2(b)(2), there should have been no enhancement because the value of each of the other individual transactions under 18 U.S.C. § 1957(a) was not shown to exceed $10,000. Accordingly, the district court's enhancement constitutes reversible error.

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the amount of value of the funds that constitute illegal activity under 18 U.S.C. § 1957, which then may serve as a specific offense characteristic enhancement.

[6] Under U.S.S.G. §2S1.2(b)(2), if the value of the funds exceeds $100,000, the offense level is increased as specified in U.S.S.G. § 2S1.1(b)(2). In turn, U.S.S.G. § 2S1.1(b)(2) provides no increase if the value of funds is $100,000 or less; a one point increase if the value is more than $100,000 but equal to or less than $200,000; a two point increase if the value is more than $200,000 but equal to or less than $350,000; and a three point increase if the value is more than $350,000 but equal to or less than $600,000.

CONCLUSION

For the aforementioned reasons, Jerry Crouch respectfully requests that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

SIRKIN, PINALES, MEZIBOV & SCHWARTZ LLP
MARTIN S. PINALES
JOHN P. FELDMEIER

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 00-3853

[Filed May 3, 2002]

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
)
v.)
)
JERRY C. CROUCH,)
Defendant-Appellant.)
)

Appeal from the United States District Court
for the Southern District of Ohio at Dayton
No. 97-00058
Walter H. Rice, Chief District Judge

JUDGES:
Before SILER and BATCHELDER, Circuit Judges; HOOD, District Judge.[1]

[1] The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

OPINION

ALICE M. BATCHELDER, Circuit Judge. Defendant-Appellant Jerry C. Crouch appeals the sentence imposed by the district court after his conviction on charges of conspiracy to conduct an illegal gambling business, in violation of 18 U.S.C. §§ 371 and 1955; engaging in monetary transactions with criminally derived property of value greater than $ 10,000, in violation of 18 U.S.C. § 1957; and making false statements on his income tax returns, in violation of 26 U.S.C. § 7206. Because we find no plain error with regard to the application of the specific offense characteristic under United States Sentencing Guidelines (U.S.S.G.) § 2S1.2(b)(2), and because we lack jurisdiction to review the district court's refusal to depart downward as requested by the defendant, we will affirm the judgment of the district court.

Crouch and seven co-defendants were named in a 56-count indictment charging conspiracy to conduct an illegal gambling business and to launder money; operating an illegal gambling business; money laundering; engaging in monetary transactions with property derived from a specified unlawful activity -- the illegal gambling business; and filing false federal tax returns. The indictment also contained a forfeiture count. Crouch was named in 50 of the indictment's 56 counts. Pursuant to a written plea agreement, Crouch pleaded guilty to one count of conspiracy to operate an illegal gambling business, one count of engaging in a monetary transaction with property derived from a specified unlawful activity, namely the gambling business, and one count of filing a false federal tax return.

The presentence report recommended that the offenses be grouped, and that the guideline for the offense of engaging in illegal monetary transactions, U.S.S.G. § 2S1.2, which carried the highest base offense level, be used to set the base offense level. The report also recommended that the specific offense characteristic found in section 2S1.2(b)(2) be applied to determine the adjusted level, based on the amount of money involved in the illegal monetary transactions. Crouch filed several objections to the presentence report. In addition to objecting to a number of factual statements contained in the report, he raised two specific objections to the sentence calculation and recommendation in the report: first, that he should not receive a four-level upward adjustment for his role in the offense, and second, that because sentencing under the money laundering guidelines rather than under the gambling offense guidelines overstated the gravity of his offenses, the district court should make a substantial downward departure. Crouch also filed a motion for downward departure on the latter grounds, *i.e.*, that his substantive offense was really gambling, and he therefore was entitled to a substantial downward departure because the guidelines under which he was being sentenced were the guidelines for money laundering, which overstated the seriousness of the offense. At no time did Crouch raise any objection to the application of the specific offense characteristic under U.S.S.G. § 2S1.2(b)(2).

The district court conducted a sentencing hearing and specifically dealt with each of Crouch's objections to the presentence report. The court declined to impose the four-level adjustment for a leadership role in the offense, and instead imposed only a two-level adjustment. Because Crouch had pleaded guilty to the offense of engaging in a monetary

transaction in property derived from specified unlawful activity, the court held that the guideline for that activity, namely section 2S1.2, was the appropriate guideline, and resulted in a base offense level of 17. Applying the specific offense characteristic of section 2S1.2(b)(2), which requires that if the value of the funds involved in the monetary transactions was greater than $100,000, the offense level must be increased according to the schedule contained in section 2S1.1(b)(2), the district court added three levels because the total value of the funds involved in the illegal transactions exceeded $350,000 but was less than $600,000. The court specifically addressed Crouch's motion for downward departure and denied the motion. The court sentenced Crouch to 24 months' imprisonment.

We turn first to Crouch's claim that the district court erred in applying the specific offense characteristic of section 2S1.2(b)(2). It is well established in this circuit that although we have discretion to review for plain error objections to sentencing that the defendant failed to raise before the district court, we may not exercise that discretion unless the defendant demonstrates that the district court's decision was plainly erroneous. *United States v. Koeberlein*, 161 F.3d 946, 949 (6th Cir. 1998). To establish plain error, Crouch must show:

> (1) that an error occurred in the district court; (2) that the error was plain, *i.e.*, obvious or clear; (3) that the error affected defendant's substantial rights; and (4) that this adverse impact seriously affected the fairness, integrity or public reputation of the judicial proceedings.

Id.

Crouch cannot make that showing here. Crouch complains before us that the district court incorrectly calculated the amount of money involved in the illegal transactions. According to Crouch, only individual transactions greater than $ 10,000 are illegal under 18 U.S.C. § 1957; the district court aggregated transactions to reach the total amount upon which the sentence was calculated; and there is no evidence that any transaction (other than one $20,000 transaction) included in that aggregation exceeded $10,000. We have previously rejected this argument, *see United States v. Selby*, 1994 U.S. App. LEXIS 21293, Nos. 93-1424, 93-1451, 93-1455, 1994 WL 416262, at *12 (6th Cir. Aug. 8, 1994) (unpublished), as have most other circuits that have addressed the issue. *See United States v. Rodriguez*, 278 F.3d 486, 490 (5th Cir. 2002); *United States v. Mullens*, 65 F.3d 1560, 1564-65 (11th Cir. 1995); *United States v. Thompson*, 40 F.3d 48, 51-52 (3d Cir. 1994); *United States v. Johnson*, 971 F.2d 562, 574-75 (10th Cir. 1992). *But see United States v. Sobral*, No. 96-4770, 1998 WL 276263, at *4-*5 (4th Cir. May 29, 1998) (unpublished) (ruling that the meaning of "value of the funds" in section 2S1.1(b)(2) includes only the value of laundered funds and that relevant conduct under section 1B1.3 can include uncharged conduct only if the uncharged conduct could have been charged as money laundering within the meaning of § 1957). Even if Crouch could show that the district court's aggregation of transactions was error, it certainly cannot be plain error, inasmuch as it follows the law, albeit unpublished, of this circuit, and the law of at least four other circuits. Accordingly, we will not review this assignment of error.

Nor may we review Crouch's claim that the district court erred in denying his motion for a substantial downward departure. We may not review the refusal of a district court to grant a downward departure if the district court understood the extent of its authority and correctly applied the Sentencing Guidelines. *United States v. Scott*, 74 F.3d 107, 112 (6th Cir. 1996). We will presume that the district court understood its discretion to depart, absent clear evidence in the record to the contrary. *United States v. Ford*, 184 F.3d 566, 585 (6th Cir. 1999).

It takes no more than a cursory review of the transcript of the sentencing hearing to determine that the district court fully understood its authority to depart. Crouch endeavors to persuade us that the district court believed that *Ford* laid down a per se rule that precluded the court from finding that Crouch's case was outside the heartland of cases involving monetary transaction offenses. But the district court's careful explanation of its reasons for denying Crouch's motion makes it clear beyond cavil that the court found no facts or factors *in Crouch's case* that took it outside the heartland or supported Crouch's claim that the guidelines sentence was too severe for the offense he had committed. Nothing the district court said indicates that it viewed *Ford* as laying down a per se rule that gambling offenses can never be determined to be outside the heartland. We lack jurisdiction to review this assignment of error.

For the foregoing reasons, we AFFIRM the judgment of the district court.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No. CR-3-97-58(1)

Martin S. Pinales
Defendants Attorney

[Filed October 19, 2000]

United States of America	)
Plaintiff	)
	)
v.	)
	)
Jerry C. Crouch	)
Defendant	)
	)

JUDGMENT IN A CRIMINAL CASE
(For offenses Committed on or After 11/1/87)

THE DEFENDANT

X pled guilty to Counts One (1), Fifty-four (54), and Fifty-Six (56)

Title & Section	Nature of Offense	Date of Offense Concluded	Count No(s)
18 U.S.C. § 371	Conspiracy to Conduct an Illegal Gambling Business	03/25/94	One (1)
18 U.S.C. § 1957	Engaging in Monetary Transactions in Property Derived From a Specified Unlawful Activity	07/12/93	Fifty-four (54)
26 U.S.C. § 7206 (1)	False Statement in Income Tax Return	04/09/94	Fifty-six (56)

The defendant is sentenced as provided in the following pages of this judgment. the Sentence is imposed pursuant to the Sentencing Reform Act of 1984.

X Counts 2,3,4,5,6-37, 44-53, and 55 are dismissed on the Motion of the United States as to this Defendant.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of Name, Residence, or Mailing Address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

District Court Judgment - 10/19/00

Defendant's Soc. Sec. No: 403-58-2555

Defendant's Date of Birth: 10/27/42

Defendant's U.S. Marshall No.: 42737-061

Defendant's Mailing and Residence Address:

5425 Castle Vista
Las Vegas, NV 89118

June 27, 2000
Date Sentence Imposed

/s/ _____
Signature of Judicial Officer

WALTER HERBERT RICE
CHIEF JUDGE
UNITED STATES DISTRICT COURT
Name & Title of Judicial Officer

10/18/00
Date

IMPRISONMENT

The Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of twenty four (24) months on Count One (1), twenty four (24) months on Count Fifty Four (54), and twenty four (24) months on Count Fifty Six (56). Counts One (1), Fifty Four (54), and Fifty Six (56) are to run concurrently with each other.

X The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated as close to his home in the Las Vegas, Nevada area as is possible.

That the defendant be accorded all allowable presentence credit for time spent incarcerated.

[] The Defendant is remanded to the custody of the United States Marshal.

[] The Defendant shall surrender to the United States Marshal for this district,

[] At a.m./p.m. on

[] As notified by the United States Marshal

X The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

[] Before 2 p.m. on

X as notified by the United States Marshal

[] as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy U.S. Marshal

SUPERVISED RELEASE

X Upon release from imprisonment the defendant shall be on supervised release for a term of three (3) years.

X The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

X The defendant shall not commit another federal, state, or local crime.

X The defendant shall not illegally possess, use or traffic in a controlled substance.

For offenses committed on or after September 13, 1994:

X The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check if applicable)

X The defendant shall not own, possess, use or traffic in a firearm or other dangerous weapon as defined in 18 U.S.C. Section 921.

X If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in full before expiration of

supervision. In accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

X The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).
the defendant shall also comply with any other conditions as set forth.

X The defendant shall resolve all differences with the Internal Revenue Service. He shall complete payment of back taxes owed to the IRS of $50,098.23 as well as penalties and interest, on a schedule to be determined by the IRS and his probation officer within the first year of supervised release.

X The defendant shall obtain and maintain employment throughout the period of supervision.

X The defendant shall provide to the probation officer any requested financial information and comply with the tax laws by filing timely and accurate income tax returns during the period of his supervision.

X The defendant shall notify his probation officer of any material changes in his economic circumstances that might affect his ability to pay any unpaid amount of restitution.

X If the defendant's health permits, he is to serve one hundred fifty (150) hours of community service on a regular basis with an agency and on a schedule agreed

upon by the defendant and the Probation Officer within the first two (2) years of supervised release.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In additions:

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;

2. the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4. the defendant shall support his or her dependents and meet other family responsibilities;

5. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6. the defendant shall notify the probation officer ten days prior to any change in residence or employment;

7. the defendant shall refrain from excessive use of alcohol;

8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12. the defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the court;

13. as directed by the probation officer, the defendant shall notify third parties of risks that my be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

Count	Assessment	Fine	Restitution
One (1)	$50.00	$10,000.00	
Fifty Four (54)	$50.00	$10,000.00	
Fifty Six (56)	$50.00	$10,000.00	$50,098.23 Plus penalties and interest, plus costs of prosecution

[] If applicable, restitution amount ordered pursuant to plea agreement.....$ _____

Totals	$150.00	$30,000.00	$50,098.23 Plus penalties and interest, plus costs of prosecution on Count 56

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $.

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. Section 3612(f). All of the payment options on Sheet 5. Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. Section 3612(g).

[] The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

[] The interest requirement is waived.

[] The interest requirement is modified as follows:

RESTITUTION

[] The determination of restitution is deferred in a case brought under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after 09/13/1994, until_____. An Amended Judgment in a Criminal Case will be entered after such determination.

X The defendant shall make restitution to the following payees in the amounts listed below.

Name of Payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority order or Percentage of pmt.
Internal Revenue Service	$50,098.23	$50,098.23 Plus penalties and interest, and costs of prosecution	
Totals	$50,098.23	$50,098.23 Plus penalties and interest, and costs of prosecution	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, 113A of Title 18 for offenses committed on or after September 13, 1994.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) costs of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A	X	in full immediately as to the special assessments and fines.
B	X	$ _____ immediately, balance due (in accordance with C, D, or E); or
C	X	to be paid on a regular basis within six (6) months from date of sentencing as to the restitution and fine.
	X	Restitution - back taxes, penalties, interest and costs of prosecution within first year of supervised release.
D	X	in installments to commence _____ days after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or
E	[]	in _____ (*e.g. equal, weekly, monthly,*

quarterly) installments of $ _____ over a period of _____ years(s) to commence ____ days after the date of this judgment.

The National Fine Center will credit the defendant for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminally monetary penalties:

[] The defendant shall pay the cost of prosecution.

[] The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States Courts National Fine Center, Administrative

[] The court adopts the factual findings and guideline application in the presentence report.

OR

X The court adopts the factual findings and guideline application in the presentence report except:

Court concludes that criminal history of three (3) substantially over represents seriousness of past criminal

conduct and likelihood of recidivism.

Guideline Range Determined by the Court:

Total Offense Level: 21

Criminal History Category: 2

Imprisonment Range: 41 to 51 months

Supervised Release Range: 1 to 3 years

Fine Range: $ 10,000.00 to $ 100,000.00

[] Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ 50,098.23, plus penalties, plus interest, plus costs of prosecution on Count 56.

[] Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

[] For offenses that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of restitution

order, and do not allow for the payment of any or some portions of a restitution order in the foreseeable future under any reasonable schedule of payments.

[] Partial restitution is ordered for the following reason(s):

[] The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

[] The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

X The sentence departs from the guideline range:

X upon motion of the government, as a result of defendant's substantial assistance.

[] for the following specific reason(s):

APPENDIX C

STATUTORY PROVISIONS

§ 1957. Engaging in monetary transactions in property derived from specified unlawful activity

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

U.S.S.G. § 2S1.1. Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity

(a) Base Offense Level:

> (1) The offense level for the underlying offense from which the laundered funds were derived, if (A) the defendant committed the underlying offense (or would be accountable for the underlying offense under subsection (a)(1)(A) of 1.3 (Relevant Conduct)); and (B) the offense level for that offense can be determined; or
>
> (2) 8 plus the number of offense levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the value of the laundered funds, otherwise.

(b) Specific Offense Characteristics

(1) If (A) subsection (a)(2) applies; and (B) the defendant knew or believed that any of the laundered funds were the proceeds of, or were intended to promote (i) an offense involving the manufacture, importation, or distribution of a controlled substance or a listed chemical; (ii) a crime of violence; or (iii) an offense involving firearms, explosives, national security, terrorism, or the sexual exploitation of a minor, increase by 6 levels.

(2) (Apply the Greatest):

(A) If the defendant was convicted under 18 U.S.C. § 1957, increase by 1 level.

(B) If the defendant was convicted under 18 U.S.C. § 1956, increase by 2 levels.

(C) If (i) subsection (a)(2) applies; and (ii) the defendant was in the business of laundering funds, increase by 4 levels.

(3) If (A) subsection (b)(2)(B) applies; and (B) the offense involved sophisticated laundering, increase by 2 levels.

§ 2S1.2. Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity

(a) Base Offense Level: 17

(b) Specific Offense Characteristics

(1) If the defendant knew that the funds were the proceeds of:

(A) an unlawful activity involving the manufacture, importation, or distribution of narcotics or other controlled substances, increase by 5 levels; or

(B) any other specified unlawful activity (see 18 U.S.C. § 1956(c)(7)), increase by 2 levels.

(2) If the value of the funds exceeded $100,000, increase the offense level as specified in § 2S1.1(b)(2).

(c) Special Instructions for Fines--Organizations

In lieu of the applicable amount from the table in subsection (d) of § 8C2.4 (Base Fine), use:

(1) The greater of $175,000 or 60 percent of the value of the funds if subsection (b)(1)(A) is used to determine the offense level; or

(2) The greater of $150,000 or 50 percent of the value of the funds if subsection (b)(1)(B) is used to determine the offense level.